

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

THE HOMESOURCE, CORP.,

Plaintiff,

v.

RETAILER WEB SERVICES, LLC,
et al.,

Defendants.

Civil Action No.: 1:18-cv-11970

Hon. Eduardo C. Robreno (EDPA)
Hon. Ann Marie Donio

**RETAILER WEB SERVICES, LLC'S REPLY IN SUPPORT OF ITS MOTION
TO DISMISS THE HOMESOURCE CORP.'S SECOND AMENDED
COMPLAINT [DOC. 195]**

Dated: July 27, 2020

Respectfully submitted,

/s/ Ethan Hougah

Ethan Hougah
Louis R. Moffa
Alexandra S. Jacobs
MONTGOMERY, McCracken,
Walker & Rhoads, LLP
457 Haddonfield Road, Suite 600
Cherry Hill, New Jersey 08002
(856) 488-7700

Adam Wolek (*pro hac vice*)
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, IL 60601
Tel.: (312) 836-4063
Fax: (312) 966-8598
awolek@taftlaw.com

William C. Wagner (*pro hac vice*)
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
Tel.: (317) 713-3500
Fax: (317) 713-3699
wwagner@taftlaw.com

*Counsel for Defendants Retailer Web Services II,
LLC; Retailer Web Services, LLC; Nationwide
Marketing Group, LLC*

ARGUMENT

Defendant Retailer Web Services, LLC (“RWS I”) moved to dismiss all of HomeSource’s claims against it (Doc. 195), and joined RWS II’s¹ related briefing (Doc. 194). RWS I noted that the Second Amended Complaint (“SAC”) treats RWS I and RWS II interchangeably, with no explanation pled as to why, even though they are distinct entities. Doc. 164 ¶ 1; *cf.* Docs. 197 & 199.

HomeSource did not file a response to RWS I’s opening motion, Doc 195. It did not contest that the SAC did not allege nor hint at agency, corporate veil piercing, vicarious liability, conspiracy, or any other legal theory under which one legal entity could be liable for the alleged acts or omissions of another. It further did not contest RWS I’s or RWS II’s corporate disclosure statements. Docs. 197 & 199. HomeSource only responded to the named-defendants’ motion, with mischaracterizations and vitriol, but without making any legal arguments or citations to authority to support naming both RWS I and II. Doc. 219 pp. 24-26 (e.g., calling RWS deceptive and disingenuous). While RWS I will not respond in kind,² it notes that HomeSource provided no response to RWS I’s motion, nor any facts supporting naming *both* RWS I and RWS II as parties. Since HomeSource declined to respond to any of these legal arguments, the Court can treat them as conceded or waived, and RWS I should be dismissed.

¹Retailer Web Services II, LLC d/b/a “Retailer Web Services” and “RWS.”

² Contrary to HomeSource’s claim, no one has represented that RWS I was the correct party in interest but that RWS II was not (*cf.* Doc. 219 p. 25). Rather, RWS I simply argued that HomeSource had not met its burden of pleading to state a claim against RWS II (*see* Doc. 59). HomeSource has long been on notice of the separate corporate structure of these entities, including from February 1, 2019 and April 5, 2019 discovery responses. *See also* Docs. 134, 140-1.

CONCLUSION

For all these reasons, Defendant Retailer Web Services, LLC respectfully requests that the Court grant its motion to dismiss Plaintiff The HomeSource, Corp.'s Second Amended Complaint under Rule 12(b)(6).

Dated: July 27, 2020

Respectfully submitted,

/s/ Ethan Hougah

Ethan Hougah
Louis R. Moffa
Alexandra S. Jacobs
MONTGOMERY, McCACKEN,
WALKER & RHOADS, LLP
457 Haddonfield Road, Suite 600
Cherry Hill, New Jersey 08002
(856) 488-7700

Adam Wolek (*pro hac vice*)
TAFT STETTINIUS & HOLLISTER LLP
111 E. Wacker Drive, Suite 2800
Chicago, IL 60601
Tel.: (312) 836-4063
Fax: (312) 966-8598
awolek@taftlaw.com

William C. Wagner (*pro hac vice*)
TAFT STETTINIUS & HOLLISTER LLP
One Indiana Square, Suite 3500
Indianapolis, IN 46204
Tel.: (317) 713-3500
Fax: (317) 713-3699
wwagner@taftlaw.com

*Counsel for Defendants Retailer Web Services II,
LLC; Retailer Web Services, LLC; Nationwide
Marketing Group, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2020, a true and correct copy of the foregoing was served via electronic mail upon the following counsel for the Plaintiff:

FLASTER/GREENBERG P.C.
Kenneth S. Goodkind, Esq.
Eric R. Clendening, Esq.
1810 Chapel Avenue West
Cherry Hill, NJ 08002
Tel.: (856) 661-1900
Fax: (856) 661-1919

Counsel for Plaintiff The HomeSource, Corp.

/s/ Ethan Hougah

Ethan Hougah
Louis R. Moffa
Alexandra S. Jacobs

*One of the attorneys for Counsel for Defendants
Retailer Web Services II, LLC; Retailer Web
Services, LLC; Nationwide Marketing Group,
LLC*